HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.12482 of 1998

Date: September 12, 2007

Between:
V.Krishna Baba. … Petitioner

And

The Andhra Pradesh State Handloom
Weavers/ Co.op Society Limited,
Rep. By its Vice-Chairman and
Managing Director. … Respondent

* * *

ORDER:

This writ petition is filed seeking a writ of *Mandamus* directing the respondent to rectify the anomaly and fix proper pay-scale and revision of pay-scales along with increments as per G.O.Ms.No.10, dated 04-02-1991, as the petitioner has been working as Computer Programmer from 9th March 1990 and to consider the petitioner for promotion as System Analyst and consequently to declare proceedings dated 24.02.1998 for recovery of Rs.29,767-09 paise in 10 equal instalments, as arbitrary and illegal.

2. It appears the petitioner was initially joined as Junior Assistant with the Andhra Pradesh State Handloom Weavers
Co-op. Society Ltd, in the year 1978. On introduction of computers in the organization for smooth running of business, since the petitioner had all the qualifications, he was transferred to Computer Department in the year 1987 to work on computer line vide proceedings dated 26.11.1987 and with effect from 14.6.1990 he was re-designated as Programmer, in-charge of EDP Section. Now, it is the grievance of the petitioner that he is a Programmer and the scale attached to the said

post is equivalent to that of Assistant Marketing Officer, therefore, he is entitled for being considered for promotion to the post of Marketing Officer promoting him as System Analyst in the Computer Department upgrading the post as Marketing Officer. The recovery sought i.e., Rs.29,767-09 paise was due to wrong fixation of his salary earlier, which is arbitrary and illegal, since no notice of any kind was issued to him.

3. The respondent filed a detailed counter-affidavit denying the allegations made by the petitioner and stated that G.O.Ms.No.10, dated 04-02-1991, Finance and Planning (FWPC) Department, has no application to the case of the petitioner. In the said G.O., the A.P. Technology Services Limited was treated as a model agency for development of software in both the State Government and Public Sector undertakings and decided certain computer personnel policy in which under item No.2.03 the Programmer/Senior Programmer/System Analyst/Senior System Analyst etc., were categorized as Technical personnel and item No.2.08 decided that no Government Department/Corporation will be permitted directly to employ technical computer personnel and they would be taken from A.P.T.S. Limited on lease basis and under item No.2.12 (b) it was decided that the technical personnel required by working in Department/Corporation will be given option to join parent cadre in A.P.T.S. Limited. Those who opt for this post will be filled in appropriately in that category in A.P.T.S. Limited, subject to their meeting required qualification of A.P.T.S. Limited for that category. It was also mentioned that those who do not opt for absorption in A.P.T.S. Limited will continue in their existing category and scale in the same Department/Corporation, but may not be eligible for promotion to the next category of post since any vacancies, here after have to be filled in from the common cadre of A.P.T.S. Limited. Since the petitioner is a Programmer, which comes under technical cadre, an option was sought vide Office Memo, dated

06-12-1995. The same was acknowledged by him and submitted a reply vide his letter dated 08-12-1995 stating that he was willing to continue in the services of APCO in existing category and scale of Assistant Marketing Officer since he was only a Programmer, he cannot be continued as Assistant Marketing Officer. In view of his option, a Memo dated 08-01-1996 was issued informing the petitioner that he was not convertible to the post of Assistant Marketing Officer or any other post, either in commercial wing or administrative wing, except in E.D.P (Computer Technical Staff) as per the said G.O.

4. Learned counsel for the petitioner strenuously contended that assuming that the petitioner opted to be in the APCO and not opted to go into the services of APTS, it must be deemed that the petitioner is being continued in the same department, may be he is named as Programmer in the computer section, since there was no other person to handle the department at that particular point of time. Further, he is also put on the time scale applicable to the Assistant Marketing Officer. Therefore, he is entitled for being promoted to the higher post of Marketing Officer as per law.

5. Whereas, Sri Ch.Jagannadha Rao, learned Standing Counsel appearing for the respondent while reiterating the stand taken in the counter stated that once option is given to retain himself in the same cadre means that he should be treated as a Programmer in the computer section and no further promotions can be made, therefore, the writ petition is devoid of merits.

6. I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

7. It is a fact that petitioner did not opt to go to APTS as technical personnel. He opted to remain in the APCO in the same category to

which he belongs. Admittedly, when the computers were introduced in the year 1987, since the petitioner was a qualified person, he was made in-charge of the section and named as Programmer and he was given pay-scale equivalent to that of Assistant Marketing Officer. Since it is not in dispute that the petitioner did not opt to go to APTS, it must be deemed that he is in the same cadre in the APCO. Simply because the petitioner gave option to remain in the APCO in the same cadre, it does not mean that he is only a computer programmer. In fact, the computer programmer post is not born on the cadre strength of the APCO at all. Therefore, he was, in fact, named as Programmer and was given pay-scale equivalent to that of Assistant Marketing Officer. Once the petitioner has given option to remain in the same department in the same cadre, it must be deemed that he remained as Assistant Marketing Officer, may be he is named as Programmer or System Analyst for the purpose of technical reasons, since he was heading the computer section, that does not mean that he is not entitled for promotion to the higher post in the APCO.

8. Under those circumstances, I am of the opinion that the petitioner is entitled for promotion to the post of Marketing Officer or any other equivalent post as per his qualifications if he is otherwise eligible as per law treating that the petitioner is a regular Assistant Marketing Officer in the APCO. In so far as the recovery is concerned, admittedly, no notice of any kind has been issued before seeking to recover the said amounts. Therefore, such recovery without putting the petitioner on notice is in gross violation of principles of natural justice.

9. For all the above reasons, the writ petition is allowed and the respondent is directed to consider the case of the petitioner for promotion to the post of Marketing Officer or any other equivalent post if he is otherwise eligible as per law treating the petitioner as regular Assistant Marketing Officer of the APCO. So far as the recovery is concerned, the department is at liberty to put the petitioner on notice by

way of issuing show cause notice and after receiving explanation they have to pass appropriate orders as per law. No costs.

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(C.V.RAMULU, J)

Date: September 12, 2007.

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